

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

LAMONT B. SIMMONS,	)	CASE NO. 08-6263 SCR
MELISSA R. SIMMONS,	)	
on behalf of themselves and all	)	
others similarly situated,	)	<u>Affidavit of Paul Mahler</u>
Plaintiffs,	)	
	)	
vs.	)	
	)	
Roundup Funding, LLC,	)	
Malen & Associates, p.c.	)	
	)	
Defendants.		

STATE OF NEW YORK       }  
COUNTY OF NASSAU       }ss:

Paul Mahler being duly sworn deposes and says:

1. I am an attorney at Malen & Associates, p.c. ("Malen"), the Defendant herein and as such have personal knowledge of the facts of this suit.
2. Plaintiffs' have initiated this class action matter alleging that the filing and defending of a Proof of Claim in Plaintiff's bankruptcy case resulted in an alleged violation of the Fair Debt Collection Practices Act.
3. As Defendant, Malen, believes no cause of action exists and as it appears this Court lacks jurisdiction to hear such matters, a motion to dismiss was filed. The briefing was completed in accordance with this Court's August 29, 2008 Order and is awaiting decision.
4. On or about October 8, 2008, Plaintiffs filed a Motion to Certify the Class.
5. Plaintiffs have failed to comply with the individual rules of Judge Robinson in the filing of this motion. Pursuant to Rule II. A. 2., a pre-motion conference is required prior to the filing of all motions except for those specifically excluded in the rules. As such, Plaintiffs were to request a pre-motion conference prior to the filing of their motion but failed to do so.
6. On October 8, 2008 via e-mail, the Defendants' jointly advised Plaintiffs counsel of his failure to comply with the Rule and requested that he withdraw his motion. No response was received.
7. It is respectfully submitted that Plaintiffs' failure to comply with the Rules of this Court should result in the denial of the motion.

8. Additionally, as both Defendants have filed a Motion to Dismiss, it is respectfully requested that the pre-motion conference and the briefing schedule for the Plaintiffs' motions be held in abeyance pending the outcome of the Motions to Dismiss.

  
\_\_\_\_\_  
Paul Mahler

Sworn to me before this 4th  
day of November, 2008

  
\_\_\_\_\_  
Notary Public

**KATHLEEN DEBOBES**  
Notary Public, State of New York  
No. 01DE6100741  
Qualified In Nassau County  
Commission Expires Oct. 27, 2011